

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:	§	
	§	Case Number 09-50140
RENEGADE HOLDINGS, INC., et al,	§	Consolidated for Administration
	§	Chapter 11
Debtors.	§	

**ORDER APPROVING EMPLOYMENT OF IRON HORSE AUCTION CO., INC.
AS AUCTIONEER FOR CERTAIN PROPERTIES**

This cause came before the Court on May 17, 2011, upon application filed April 22, 2011 by Peter L. Tourtellot, Chapter 11 Trustee for Renegade Holdings, Inc., Alternative Brands, Inc., and Renegade Tobacco Company (“Debtors”) pursuant to § 327 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) and Rules 2014 and 6005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order approving Debtors’ employment of Iron Horse Auction Co., Inc. as auctioneer for certain real property located in Davie County, North Carolina (the “Application”). By separate motion filed April 22, 2011, Debtors sought court approval of the sale of the real property (the “Sale Motion”).

The Court has jurisdiction to consider the Application and to grant the relief provided herein in accordance with 28 U.S.C. §§ 157 and 1334.

Notice of the hearing on the Application was properly served on all parties in interest pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules. No other or further notice need be provided.

Appearing at the hearing on the Application were Robyn R. C. Whitman, Esq., on behalf of the Bankruptcy Administrator for the Middle District of North Carolina, John A. Northen, Special Counsel to the Chapter 11 Trustee, Paul A. Fanning, counsel to Bank of the Carolinas, G.

Gray Wilson, counsel to the defendants in adversary proceeding no. 10-06053, and Gene B. Tarr, Special Counsel to the Chapter 11 Trustee.

No objections to the Application were filed and none were raised at the hearing.

Upon consideration of the Application, the representations of counsel, the record in this case and with the consent of the parties, the Court makes the following findings of fact and conclusions of law:

1. On January 28, 2009 (“Petition Date”), Renegade Holdings, Inc., Renegade Tobacco Company, and Alternative Brands, Inc. filed voluntary petitions seeking relief under Chapter 11 of the United States Bankruptcy Code and orders for relief were entered thereon.

2. After the Petition Date, Debtors continued in possession of their respective assets and operated their businesses as debtors-in-possession. By order entered August 18, 2010, the Court appointed Peter L. Tourtellot (“Trustee”) as Chapter 11 Trustee for Debtors.

3. On September 23, 2010, Debtors commenced Adversary Proceeding No. 10-06053 against Calvin A. Phelps, Lisa Yamaoka a/k/a Lisa Phelps, and other defendants (“Adversary Proceeding”).

4. In the Adversary Proceeding, Debtors filed a verified complaint to avoid and recover fraudulent transfers pursuant to 11 U.S.C. §§ 541, 544, 548, and 550 and N.C.Gen.Stat. § 39-23.4, for imposition of a constructive trust on, *inter alia*, the Properties (as hereinafter defined) and for other relief pursuant to applicable North Carolina law.

5. On September 24, 2010, Debtors moved the Court for entry of an order of attachment against Defendants. On September 24, 2010, the Court entered its order granting the attachment motion.

6. On September 28, 2010, the Clerk of this Court issued a Writ of Attachment which provided that the Trustee shall act as substitute custodian of the attached property on

behalf of this Court.

7. Calvin A. Phelps (“Mr. Phelps”) and Lisa A. Yamaoka (“Ms. Yamaoka”) consent to the sale of the Properties before judgment in the Adversary Proceeding.

8. Mr. Phelps, individually, and Mr. Phelps and Ms. Yamaoka, as tenants by the entireties, are record owners of the following real property (collectively referred to as the “Properties” or individually as a “Property”):

(a) Three (3) parcels consisting of 310.57 +/- acres of adjoining land located on NC Hwy 801 and US Hwy 64 in Davie County, North Carolina with frontage on the Yadkin River and consisting of the following acreages:

(i) 228.48 +/- acres, Parcel# 5777870922, as described in Book 315, Page 3 of the Davie County Registry (Mr. Phelps as record owner);

(ii) 66.49 +/- acres, Parcel# 5777994297, as described in Book 648, Page 352 of the Davie County Registry (Mr. Phelps and Ms. Yamaoka, as tenants by the entireties, as record owner); and

(iii) 15.6 +/- acres, Parcel# 5788005450, as described in Book 648, Page 355 of the Davie County Registry (Mr. Phelps and Ms. Yamaoka, as tenants by the entireties, as record owner);

(b) One (1) parcel consisting of 27.828 +/- acres located off US Hwy 601 North on Allen Road in Davie County, North Carolina, partially cleared and currently in crop production, Parcel# 5729587793, as described in Book 454, Page 60 of the Davie County Registry (Mr. Phelps as record owner); and

(c) Two (2) adjoining parcels in Davie County, North Carolina consisting of the following acreages:

(i) 1.624 +/- acres with a brick building with frontage on US Hwy 601 South, Parcel# 5746515059, as described in Book 410, Page 941 of the Davie County Registry (Mr. Phelps as record owner); and

(ii) .727 +/- acres with a wooden structure not in current use and appears abandoned with frontage on NC Hwy 801, Parcel# 5746514369, as described in Book 410, Page 943 of the Davie County Registry (Mr. Phelps as record owner).

9. As set forth in the Sale Motion, Debtors, with the consent of Mr. Phelps and Ms.

Yamaoka, have determined that a public auction of the Properties is the most effective method of maximizing the sales proceeds from sale of the Properties.

10. Debtors desire to employ Iron Horse Auction Co., Inc. (“Iron Horse”) to market the Properties, and to conduct a sale, by means of a public auction. At the hearing, the parties agreed that, in order to allow sufficient time for advertising, the public auction should be held at 6:00 p.m. on Thursday, June 23, 2011 (the “Sale”), which the Court approved.

11. The Court has the authority to approve Debtors’ employment of Iron Horse and to approve compensation to Iron Horse in accordance with Bankruptcy Code §§ 327 and 330.

12. Section 327(a) of the Bankruptcy Code provides that the trustee, with the court’s approval, may employ an auctioneer that does not hold or represent an interest adverse to the estate, and that is a disinterested person, to assist the trustee in carrying out the trustee’s duties.

13. Debtors met the requirements of Bankruptcy Rule 2014(a) for the employment of Iron Horse by setting forth in the Application the required criteria, including, among other items, the facts demonstrating the necessity for the employment, the reasons for the selection, the professional services to be rendered, and the arrangement for compensation.

14. As shown by the Affidavit of Thomas McInnis attached to the Application as Exhibit A, Iron Horse is experienced in matters of this nature, has auctioned and sold similar real property in the same geographic area in which the Properties are located, is a disinterested person within the meaning of § 327(a) of the Bankruptcy Code, does not hold or represent an interest adverse to Debtors’ estates, and is qualified to serve as auctioneer. As set forth in the Auction Marketing Agreement, attached to the Application as Exhibit B (“Auction Marketing Agreement”), Iron Horse agreed to comply with Bankruptcy Rule 6004(f)(1).

15. Paragraph 6 of the Auction Marketing Agreement mistakenly referenced paragraphs 13 and 18. Paragraph 6 should have referenced paragraphs 14 and 19 and shall be

revised accordingly prior to execution.

NOW THEREFORE, for good and sufficient cause shown, it is hereby

ORDERED that Debtors' employment of Iron Horse Auction Co., Inc., as auctioneer to perform the professional services set forth in the Auction Marketing Agreement, is approved; and it is further

ORDERED that Debtors are authorized to enter the Auction Marketing Agreement; and it is further

ORDERED that sales proceeds sufficient to compensate Iron Horse in accordance with the terms of the Auction Marketing Agreement shall be held by Gene B. Tarr, Special Counsel to the Chapter 11 Trustee, in a segregated or trust account, pending approval by this Court after notice and hearing; and it is further

ORDERED that this Court shall retain exclusive jurisdiction to resolve any disputes which may arise concerning the employment of Iron Horse, or in connection with this Order.

PARTIES TO BE SERVED

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